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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1967

No. 107

UNITED STATES OF AMERICA, APPELLANT

v.

ARNOLD HABIG AND JEROME SCHROERING

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

FILED APRIL 21, 1967
PROBABLE JURISDICTION NOTED OCTOBER 9, 1967

Supreme Court of the United States

OCTOBER TERM, 1967

No. 107

UNITED STATES OF AMERICA, APPELLANT

v.

ARNOLD HABIG AND JEROME SCHROERING

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

INDEX

	Page
Docket Entries	1
Indictment	5
Defendants' Motion to Dismiss Counts IV and VI of Indictment	10
District Court's Opinion dated January 23, 1967	11
Notice of Appeal to the Supreme Court dated February 20, 1967	15
Notice of Appeal to the Supreme Court dated February 21, 1967	17
Order noting probable jurisdiction	19

[fol. 1]

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

66CR 138

THE UNITED STATES

vs.

ARNOLD F. HABIG, JEROME M. SCHROERING

CALE J. HOLDER, JUDGE

ATTORNEYS

For U.S.:

United States Attorney

For Defendant:

FRED P. BAMBERGER, 708 Hulman Building, Evansville, Indiana

LESTER M. PONDER, 1313 Merchants Bank Bldg., Indianapolis, Indiana

STATISTICAL RECORD	COSTS
J.S. 2 mailed	Clerk
J.S. 3 mailed	Marshal 6.00
Violation Corporate Tax Evasion.	Docket fee
Title 26	
Sec. 7201—7 counts	

DATE	PROCEEDINGS
8/12/66	Indictment filed; defendants O.R.
8/15/66	Praecipes for summons filed. Summons issued returnable Sept. 9, 1966 at 9:30 A.M.
8/25/66	U.S. Marshal returns summons—as to both defendants served by certified mail on August 17, 1966.

DATE	PROCEEDINGS
9/ 1/66	Defendants file motion for continuance of arraignment date, c/s.
9/30/66	Defendants file motion for continuance of arraignment date, c/s.
10/ 3/66	Court Grants defendants' motion for continuance of arraignment.
[fol. 2]	
10/28/66	Government appears by U.S. Attorney, defendants appear in person and by their privately employed counsel, Fred P. Bamberger and Lester Ponder. Both defendants having been advised of their rights, now state that they thoroughly understand the nature of the charges against them. Being arraigned upon the indictment for plea, both defendants enter pleas of not guilty to all seven counts. This cause will be placed on the next published calendar.
10/31/66	Defendants file certification of service of defendants' motion to dismiss IV and VI of indictment.
11/ 8/66	Government files memorandum in opposition to the defendant's motion to dismiss counts IV and VI of the indictment, c/s.
11/15/66	Defendants file motion for extension of time to file and serve reply brief.
11/17/66	Court approves defendant's motion for extension of time in which to file and serve reply brief and the time is extended to and including November 2.
11/21/66	Defendant Habig files motion to depart jurisdiction, c/s.
11/23/66	Court enters order granting defendant Habig leave to depart from this jurisdiction. (SE). Copy to attorneys.
11/28/66	Defendants file reply brief in support of defendants' motion to dismiss counts IV and VI of indictment, c/s.

DATE	PROCEEDINGS
12/27/66	Parties file stipulation of facts.
1/13/67	Defendants file waiver of evidentiary hearing relating to defendants' motion to dismiss counts IV and VI of indictment. Government also files waiver on above hearing.
1/23/67	Court sustains defendant's motion to dismiss Counts IV and VI of the indictment and the same are hereby dismissed.
2/15/67	Defendants file motion for continuance with no objection.
2/16/67	Court Grants defendant's motion for continuance of this cause from the current calendar and to place it on the fall calendar beginning in September, 1967.
2/20/67	Government files notice of Appeal to the Supreme Court of the United States from the order of January 23, 1967 dismissing Counts IV of the indictment which charged the defendants Arnold F. Habig and Jerome M. Schroering with violating 28 U.S.C. 7201 and 7206 (2).
2/21/67	Government files notice of appeal to the Supreme Court of the United States from the order of January 23, 1967 dismissing Counts VI of the indictment.
[fol. 2A]	
3/20/67	Transcript of record on appeal mailed to Clerk, Supreme Court of the United States, Washington, D. C.
7/21/67	Defendants file motion to defer the trial of this cause to the next term following the October, 1967 term of the U.S. District Court at Indianapolis, U.S. has no objection.
9/ 8/67	Court Grants defendants' motion to defer the trial of this cause to the next term following the October, 1967 term of the U.S. District Court.

DATE	PROCEEDINGS
10/ 4/67	Defendant Habit files motion to depart jurisdiction, c/s.
10/ 5/67	Court Grants defendant Arnold F. Habig's motion to depart jurisdiction of the Court.
10/13/67	Order of the Supreme Court of the United States (No. 107, October Term 1967) received. Order is stated as follows: The statement of jurisdiction in this case (Arnold Habig) et al. having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar—dated October 9, 1967.

[fol. 3]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

No. IP 66-CR-138

UNITED STATES OF AMERICA

v.

ARNOLD F. HABIG, JEROME M. SCHROERING

INDICTMENT

Count I

The Grand Jury charges:

That on or about the 16th day of September, 1960, ARNOLD F. HABIG, who was the President of The Jasper Corporation and JEROME M. SCHROERING did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by The Jasper Corporation to the United States of America for the fiscal year ended June 30, 1960, by filing and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of Indianapolis at Indianapolis, Indiana, in the Southern District of Indiana a false and fraudulent tax return wherein it was stated that the taxable income of the corporation for the said fiscal year was the sum of $113,417.44 and that the total amount of tax due thereon was the sum of $53,370.78 whereas, as the defendants then and there well knew, the taxable income of the corporation for the said fiscal year was the sum of $196,108.58, more or less, upon which taxable income the corporation owed to the United States of America a total tax of $96,370.17, more or less, in violation of Section 7201 Internal Revenue Code; 26 U.S.C. Section 7201.

Count II

The Grand Jury further charges:

[fol. 4] That on or about the 16th day of September, 1960, ARNOLD F. HABIG, who was the President of Evansville Veneer and Lumber Company, Inc. and JEROME M. SCHROERING did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by Evansville Veneer and Lumber Company, Inc., to the United States of America for the fiscal year ended June 30, 1960, by filing and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of Indianapolis at Indianapolis, Indiana, in the Southern District of Indiana a false and fraudulent tax return wherein it was stated that the taxable income of the corporation for the said fiscal year was the sum of $93,372.62 and that the total amount of tax due thereon was the sum of $43,053.76 whereas, as the defendants then and there well knew, the taxable income of the corporation for the said fiscal year was the sum of $280,185.62, more or less, upon which taxable income the corporation owed to the United States of America a total tax of $140,196.52, more or less, in violation of Section 7201 Internal Revenue Code; 26 U.S.C. Section 7201.

Count III

The Grand Jury further charges:

That on or about the 16th day of September, 1960, ARNOLD F. HABIG, who was the President of Borden Cabinet Corporation and JEROME M. SCHROERING did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by Borden Cabinet Corporation to the United States of America for the fiscal year ended June 30, 1960, by filing and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of Indianapolis at Indianapolis, Indiana, in the Southern District of Indiana a false and fraudulent tax return wherein it was stated that the taxable income of the corporation for the said

fiscal year was the sum of $55,939.33 and that the total amount of tax due thereon was the sum of $23,588.45 whereas, as the defendants then and there well knew, the taxable income of the corporation for the said fiscal year was the sum of $131,133.73, more or less, upon which [fol. 5] taxable income the corporation owed to the United States of America a total tax of $62,689.53, more or less, in violation of Section 7201 Internal Revenue Code; 26 U.S.C. Section 7201.

Count IV

The Grand Jury further charges:

That on or about the 15th day of August, 1960, ARNOLD F. HABIG who was the President of Gordonsville Manufacturing Company, Inc. and JEROME M. SCHROERING did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by Gordonsville Manufacturing Company, Inc. to the United States of America for the fiscal period beginning March 7, 1959 and ending February 29, 1960, by filing and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of Indianapolis at Indianapolis, Indiana, in the Southern District of Indiana a false and fraudulent tax return wherein it was stated that the taxable income of the corporation for the said fiscal period was the sum of $30,235.76, and that the total amount of tax due thereon was the sum of $10,222.60 whereas, as the defendants then and there well knew, the taxable income of the corporation for the said fiscal period was the sum of $71,965.64, more or less, upon which taxable income the corporation owed to the United States of America a total tax of $31,922.13, more or less, in violation of Section 7201 Internal Revenue Code; 26 U.S.C. Section 7201.

Count V

The Grand Jury further charges:

That on or about the 16th day of September, 1960, ARNOLD F. HABIG, who was the President of Gordonsville Manufacturing Company, Inc. and JEROME M.

SCHROERING did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by Gordonsville Manufacturing Company, Inc. to the United States of America for the short fiscal period beginning March 1, 1960 and ending June 30, 1960, by filing and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of [fol. 6] Indianapolis at Indianapolis, Indiana, in the Southern District of Indiana a false and fraudulent tax return wherein it was stated that the taxable income of the corporation for the said short fiscal period was the sum of $17,831.68 and that the total amount of tax due thereon was the sum of $7,439.14 whereas, as the defendants then and there well knew, the taxable income of the corporation for the said short fiscal period was the sum of $61,341.18, more or less, upon which taxable income the corporation owed to the United States of America a total tax of $30,064.08, more or less, in violation of Section 7201 Internal Revenue Code; 26 U.S.C. Section 7201.

Count VI

The Grand Jury further charges:

That on or about the 12th day of August, 1960, in the Southern District of Indiana, ARNOLD F. HABIG, President of W. W. Kimball Company and JEROME M. SCHROERING, did wilfully and knowingly aid and assist in, and counsel, procure, and advise the preparation and presentation to the District Director of Internal Revenue for the Internal Revenue District of Chicago, at Chicago, Illinois, of an income tax return of W. W. Kimball Company, a corporation, for the fiscal year ended February 29, 1960, which was false and fraudulent as to a material matter in that it represented that the W. W. Kimball Company had gross receipts for said fiscal year in the sum of $5,900,886.09 whereas, as the defendants then and there well knew, the said W. W. Kimball Company had gross receipts of $5,604,191.28 for said fiscal year in violation of Section 7206(2) Internal Revenue Code; 26 U.S.C., Section 7206(2).

Count VII

The Grand Jury further charges:

That on or about the 15th day of September, 1960, in the Southern District of Indiana, ARNOLD F. HABIG, President of W. W. Kimball Company and JEROME M. SCHROERING, did wilfully and knowingly aid and assist in, and counsel, procure, and advise the preparation and presentation to the District Director of Internal Revenue [fol. 7] for the Internal Revenue District of Chicago, at Chicago, Illinois, of an income tax return of W. W. Kimball Company, a corporation, for the short fiscal period beginning March 1, 1960 and ending June 30, 1960, which was false and fraudulent as to a material matter in that it represented that the W. W. Kimball Company had gross receipts for said short fiscal period in the sum of $1,882,-445.68, whereas, as the defendants then and there well knew, the said W. W. Kimball Company had gross receipts of $1,749,202.57 for said short fiscal period in violation of Section 7206(2) Internal Revenue Code; 26 U.S.C. Section 7206(2).

A TRUE BILL

.....

Foreman

.....

United States Attorney

[fol. 9]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

No. IP 66-CR-138
Filed 10/28/66

UNITED STATES OF AMERICA

v.

ARNOLD F. HABIG, JEROME M. SCHROERING

DEFENDANTS' MOTION TO DISMISS COUNTS IV AND VI OF INDICTMENT

The defendants, by counsel, move the Court to dismiss Counts IV and VI of the Indictment on the ground that the United States is without jurisdiction to prosecute, and the Court is without jurisdiction to try the defendants for the offenses therein charged because the applicable periods of limitation have run.

/s/ Fred P. Bamberger
FRED P. BAMBERGER
BAMBERGER, FOREMAN, OSWALD AND HAHN
708 Hulman Building
Evansville, Indiana
425-1591

/s/ Lester M. Ponder
LESTER M. PONDER
BARNES, HICKAM, PANTZER & BOYD
1313 Merchants Bank Building
Indianapolis, Indiana
638-1313

/s/ Anton Dimitroff
ANTON DIMITROFF
BARNES, HICKAM, PANTZER & BOYD
1313 Merchants Bank Building
Indianapolis, Indiana
638-1313

[fol. 56]

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

No. IP 66-CR-138

Received, Jan. 24, 1967, U. S. Attorney, Indianapolis, Ind.

UNITED STATES OF AMERICA

vs.

ARNOLD F. HABIG, JEROME M. SCHROERING

ENTRY

The above entitled action came before the Court for ruling on defendants' Motion to Dismiss Counts IV and VI of Indictment and brief in support thereof filed October 28, 1966, the government's memorandum in opposition thereto filed November 8, 1966, plaintiff's reply brief filed November 28, 1966, Stipulation of Facts filed December 27, 1966, and the government's and defendants' waiver of an evidentiary hearing and argument filed January 13, 1967. The Court being duly advised in the matter now finds:

1. That Count IV of the indictment charges that on or about August 15, 1960 the defendants filed and caused to be filed a false and fraudulent tax return on behalf of Gordonsville Manufacturing Company Inc.

2. That Count VI of the indictment charges that on or about August 12, 1960 the defendants did wilfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation of a false and fraudulent tax return on behalf of W. W. Kimball Company.

3. That the companies on whose behalf the fraudulent tax returns were allegedly filed had fiscal taxable years ending on the last day of the month of February 1960.

[fol. 57] 4. That the prescribed date for filing the tax returns allegedly filed by the defendants on behalf of Gordonsville Manufacturing Company Inc. and W. W. Kimball Company was May 15, 1960.

5. That the Gordonsville Manufacturing Company Inc. received a three month extension for the filing of its tax return on May 16, 1960 by filing an application therefore with the Director of Internal Revenue, Indianapolis, Indiana, on May 16, 1960, and that the W. W. Kimball Company received a three month extension for the filing of its tax return on May 9, 1960 by filing an application therefore with the District Director of Internal Revenue, Chicago, on May 9, 1960.

6. That the tax return allegedly filed by the defendants on behalf of Gordonsville Manufacturing Company Inc. was filed with the Director of Internal Revenue, Indianapolis, Indiana, August 15, 1960, and that the tax return allegedly procured by the defendants on behalf of W. W. Kimball Company was filed with the District Director of Internal Revenue, Chicago, Illinois, on August 12, 1960.

7. That the indictment in this action was returned August 12, 1966.

IT IS THEREFORE ORDERED AND ADJUDGED that the defendants' Motion to Dismiss Counts IV and VI of Indictment is SUSTAINED and that Counts IV and VI of the indictment be and are hereby dismissed. The period of limitations for the offenses charged in Counts IV and VI of the indictment is six (6) years. Title 26 U.S.C.A. Section 6531. For the purpose of determining the period of limitation on criminal prosecutions, the rules of Section 6513 are applicable Title 26 U.S.C.A. Section 6531. Title 26 U.S.C.A. Section 6513 states that "For the purposes of this subsection, the last [fol. 58] day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer * * *". Therefore, the question presented by the Motion to Dismiss is whether the indictment in Counts IV and VI was returned beyond the period of limitations. If the returns in question are

deemed to be filed on the date they were actually received, then the indictment on Counts IV and VI is not defective, for it was returned within the six (6) year period of limitations from those dates. However, such a construction is unacceptable in light of the statutory authority quoted above. The statutory mandate is clear—for the purpose of criminal prosecutions, the last day prescribed for filing shall be determined without regard to any extension of time granted the taxpayer. The last day prescribed for filing the returns in question was May 15, 1960 and the indictment was returned August 12, 1966 which is clearly beyond the six (6) year statute of limitations. The government has proposed the theory that a taxpayer who is given the benefit of an extension of time acquires a new due date. Even if this were so, it would not remedy the defect in Count IV of the indictment, for Gordonsville Manufacturing Company Inc. did not receive an extension until May 16, 1960. The statute of limitations necessarily began to run on the original due date of May 15, 1960. The Court cannot, in any case, accept the government's construction of Section 6513 for it is based upon a consideration of sections concerning civil claims for credits or refunds of which it is admittedly a part. However, Congress by Section 6531 for the sole purpose of determining the period of limitations in criminal prosecutions adopted only Section 6513. This Congress had a right to do. The statute is not ambiguous, and therefore leaves no room for construction. As was stated in *Hull* v. *United States*, 356 F.2d 919 (5th Cir. 1966), "The statute seems clear to the effect that returns [fol. 59] are deemed to have been filed and wilfull acts of (sic) omissions committed on the last date prescribed for the filing of returns irrespective of extensions of time granted * * *". Judge Steckler, Chief Judge of this Court, in the case of United States v. Sheety, 224 F.Supp. 789 (S.D.Ind. 1963) made a similar finding. In that case the Court construed Section 6531 and Section 6513(a) and held that the date of the offense is considered to be the date prescribed for filing. The Court went on to say that it considered itself bound "by the clear language"

of the statutes. This Court can find no reason to deviate from that construction.

Dated this 23 day of January, 1967.

CALE J. HOLDER
CALE J. HOLDER,
Judge,
United States District Court
Southern District of Indiana

[fol. 60]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

No. IP 66-CR-138

Filed, Feb. 20, 2:43 P.M., '67, Robert G. Newbold, Clerk

UNITED STATES OF AMERICA

v.

ARNOLD F. HABIG, JEROME M. SCHROERING

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that the United States appeals to the Supreme Court of the United States from the order of January 23, 1967, dismissing Counts IV of the indictment which charged the defendants Arnold F. Habig and Jerome M. Schroering with violating 28 U.S.C. 7201 and 7206(2).

This appeal is taken pursuant to 18 U.S.C. 3731.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include therein the following:

1. Transcript of docket entries
2. Indictment
3. Motions to dismiss the indictment
4. Memorandum of defendants in support of motion to dismiss indictment
5. Plaintiff's response to defendants' motions to dismiss.
6. Defendants' reply to plaintiff's response.
7. Memorandum of decision, order and judgment granting defendants' motion to dismiss Counts IV and VI of the indictment (dated January 23, 1967)
8. This notice of appeal

III. The following question is presented by this appeal:

[fol. 61] Whether the six-year period of limitations provided for criminal prosecutions by Section 6531 of the Internal Revenue Code of 1954 began to run on the date the returns were filed in August, 1960, or on the last day prescribed by the Code for filing the returns—May 15, 1960—in view of the provisions of Section 6513 of the Code.

Dated at Indianapolis, Indiana, this 20th day of February, 1967.

/s/ Richard P. Stein
RICHARD P. STEIN
United States Attorney
Southern District of Indiana

This is to certify that a copy of the foregoing Notice of Appeal has been mailed to Fred P. Bamberger, Bamberger, Foreman, Oswald and Hahn, 708 Hulman Building, Evansville, Indiana, and to Lester M. Ponder, Barnes, Hickam, Pantzer & Boyd, 1313 Merchants Bank Building, Indianapolis, Indiana, counsel for the defendants, this 20 day of February, 1967.

/s/ Richard P. Stein
RICHARD P. STEIN
United States Attorney
Southern District of Indiana

[fol. 62]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

No. IP 66-CR-138

Filed, Feb. 21, 4:22 P.M., '67, Robert G. Newbold, Clerk

UNITED STATES OF AMERICA

v.

ARNOLD F. HABIG, JEROME M. SCHROERING

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that the United States appeals to the Supreme Court of the United States from the order of January 23, 1967, dismissing Counts VI of the indictment which charged the defendants Arnold F. Habig and Jerome M. Schroering with violating 28 U.S.C. 7201 and 7206(2).

This appeal is taken pursuant to 18 U.S.C. 3731.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include therein the following:

1. Transcript of docket entries
2. Indictment
3. Motions to dismiss the indictment
4. Memorandum of defendants in support of motion to dismiss indictment.
5. Plaintiff's response to defendants' motions to dismiss.
6. Defendants' reply to plaintiff's response.
7. Memorandum of decision, order and judgment granting defendants' motion to dismiss Counts IV and VI of the indictment (dated January 23, 1967)
8. This notice of appeal

III. The following question is presented by this appeal:

Whether the six-year period of limitations provided for criminal prosecutions by Section 6531 of the Internal Revenue Code of 1954 began to run on the date the returns were filed in August, 1960, or on the last day prescribed by the Code for filing the returns—May 15, 1960—in view of the provisions of Section 6513 of the Code.

Dated at Indianapolis, Indiana, this 21 day of February 1967.

/s/ Richard P. Stein
RICHARD P. STEIN
United States Attorney

This is to certify that a copy of the foregoing Notice of Appeal has been mailed to Fred P. Bamberger, 708 Hulman Bldg., Evansville, Indiana and to Lester M. Ponder, 1313 Merchants Bank Bldg., Indianapolis, Indiana on this 21 day of February 1967.

/s/ Richard P. Stein
RICHARD P. STEIN
United States Attorney

[fol. 64]

SUPREME COURT OF THE UNITED STATES

No. 107, October Term, 1967

UNITED STATES, APPELLANT

v.

ARNOLD HABIG, ET AL.

APPEAL from the United States District Court for the Southern District of Indiana.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

October 9, 1967

Mr. Justice Marshall took no part in the consideration or decision of this case.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967 280809 359

SUPREME COURT, U.S.

No. 1311

Office-Supreme Court, U.S.
FILED
APR 27 1967
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1966

UNITED STATES OF AMERICA, APPELLANT

v.

ARNOLD HABIG AND JEROME SCHROERING

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA

JURISDICTIONAL STATEMENT

THURGOOD MARSHALL,
Solicitor General,
MITCHELL ROGOVIN,
Assistant Attorney General,
JOSEPH M. HOWARD,
RICHARD B. SUHRHEIN,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1966

UNITED STATES OF AMERICA, APPELLANT

v.

ARNOLD HABIG AND JEROME SCHROERING

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the district court (App. A. *infra*, pp. 8–11) is not reported.

JURISDICTION

The order of the district court dismissing Counts 4 and 6 of the indictment was entered on January 23, 1967 (App. *infra*, p. 11). Notices of appeal to this Court were filed in the district court on February 20 and 21, 1967. The jurisdiction of this Court to review, on direct appeal, a judgment dismissing an indictment or counts thereof on the ground of the statute of limitations is conferred by 18 U.S.C. 3731. *United States* v. *Barber*, 219 U.S. 72; *United States* v. *Goldman*, 277 U.S. 229, 236–237.

259-994—67

QUESTION PRESENTED

Under the Internal Revenue Code certain corporate income tax returns were due for filing on May 15, 1960, but the corporations obtained extensions of time to August 15, 1960. The returns were filed on August 12 and 15, 1960. The question presented is whether the six-year statute of limitations on tax evasion and other crimes relating to the filing of false tax returns began to run when the returns were filed (August 12 and 15, 1960) or when the returns would have been due had there been no extensions of time (May 15, 1960).

STATUTES INVOLVED

The relevant portions of the Internal Revenue Code of 1954, §§ 6513 and 6531, are set forth in Appendix B, *infra,* pp. 12–13.

STATEMENT

Appellees were officers or employees of Gordonsville Manufacturing Company and W. W. Kimball Company. Both corporations reported their income on a fiscal tax year ending February 29, 1960; their income tax returns were thus due on May 15, 1960. Both corporations obtained from the government 90-day extensions of time for filing their returns to August 15, 1960. Kimball Company filed its return on August 12, 1960, and Gordonsville filed on August 15, 1960.

Appellees were indicted, *inter alia,* for violation of 1954 Code § 7201 (attempted evasion of tax) by filing a false corporate tax return for Gordonsville on August 15, 1960 (Count 4), and for violation of 1954

Code § 7206(2) (wilfully aiding in the preparation and presentation of a false return) by aiding in the preparation and presentation of a false corporate tax return for Kimball filed on August 12, 1960 (Count 6). The indictment was returned on August 12, 1966, within six years after the filing of the two allegedly false returns (August 12 and 15, 1960) but more than six years from the date prescribed by the Code for their filing, not counting extensions (May 15, 1960). The government contended that the offenses were committed when the false returns were filed, so that the six-year statute of limitations had not run when the indictment was returned. The district court dismissed both Counts 4 and 6 on the ground of limitations. (App. *infra*, pp. 8–11.)

THE QUESTION IS SUBSTANTIAL

This case presents a significant procedural question in the enforcement of the criminal provisions of the Internal Revenue Code.

1. Section 6531 of the Code (App. *infra*, pp. 12–13) provides that criminal proceedings such as these must be instituted within six years "next after the commission of the offense." Absent further relevant statutory language, the offense of attempted tax evasion as well as the offense of aiding in the presentation of a false return is committeed at the time that the false return is filed.[1] However, § 6531 goes on to pro-

[1] See *Cave* v. *United States*, 159 F. 2d 464 (C.A. 8), certiorari denied, 331 U.S. 847; *United States* v. *Croessant*, 178 F. 2d 96 (C.A. 3), certiorari denied, 339 U.S. 927; *United States* v. *Yeoman-Henderson, Inc.*, 193 F. 2d 867, 869 (C.A. 7); *Myres* v. *United States*, 174 F. 2d 329, 334 (C.A. 8), certiorari denied, 338 U.S. 849; *Benham* v. *United States*, 215

vide that "[f]or the purpose of determining the periods of limitation on criminal prosecutions, the rules of section 6513 shall be applicable." Section 6513(a) (App. *infra*, p. 12) provides that "any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day," and that "[f]or purposes of this subsection, the last day prescribed for filing the return * * * shall be determined without regard to any extension of time granted the taxpayer."

Section 6513(a), which is captioned "Early Return," was meant to apply where a taxpayer filed his return before the due date specified in the Code. In such a case the return would be treated as filed on the due date. Thus no taxpayer can shorten the statute of limitations by filing his return earlier than required by the Code, and the government can always be sure that the six-year statute does not run on an offense until at least six years after the false return was originally due, regardless of whether the taxpayer filed it early. If, for example, the two corporate returns here in question (which were originally due May 15, 1960) had been filed on April 15, 1960, § 6513(a) would have caused the six-year statute of limitations to begin running not on April 15, 1960, but on May 15, 1960.

F. 2d 472, 473 (C.A. 5); *Swallow* v. *United States*, 307 F. 2d 81, 83 (C.A. 10), certiorari denied, 371 U.S. 950; *Hayes* v. *United States*, 227 F. 2d 540, 542 (C.A. 10); *Butzman* v. *United States*, 205 F. 2d 343, 350–351 (C.A. 6), certiorari denied, 346 U.S. 828; *Guzik* v. *United States*, 54 F. 2d 618, 619 (C.A. 7), certiorari denied, 285 U.S. 545; *Bowles* v. *United States*, 73 F. 2d 772, 774 (C.A. 4).

However, the section has no application to returns which are filed after the due date specified in the Code. If the two corporations here in question, after obtaining 90-day extensions until August 15, 1960, had filed their returns on June 1, 1960, § 6513(a) would not have been applicable because the returns would not have been "filed before the last day prescribed for the filing thereof * * * determined without regard to any extension of time granted the taxpayer." Thus, the offenses would have been committed on June 1, 1960—the day the returns were filed—and the statute of limitations would have begun to run at that time.

The legislative history of § 6513(a) and its predecessor, which was first enacted in 1942,[2] confirms this construction. The 1942 committee reports state that "This provision does not apply to taxpayers who are given the benefit of an extension of time in which to file their returns, and [who] file the return before the last day of the extended period." H. Rep. No. 2333, 77th Cong., 2d Sess., p. 119; S. Rep. No. 1931, 77th Cong., 2d Sess., p. 156.[3]

Nevertheless, the district court construed § 6513(a) as providing that the offenses specified in § 6531 are

[2] 1939 Code § 322(b)(4), added by Act of October 21, 1942, Ch. 619, § 169(a)(4), 56 Stat. 877.

[3] When § 6513(a)'s predecessor was first enacted in 1942 it (§ 6513(a)) extended "the existing income-tax [refund] rule as to early returns" "to all other taxes" (H. Rep. No. 1337, 83d Cong., 2d Sess., p. A 416; S. Rep. No. 1622, 83d Cong., 2d Sess., p. 587) and to criminal prosecutions. 1954 Code § 6531.

applied only to the statute of limitations on civil income tax refund cases, 1939 Code § 322(b)(4). The 1954 Code

committed on the date prescribed by the Code for filing the return, even where, as here, the return is not filed before that date. The district court thus held that the offenses in the instant case were committed on May 15, 1960, so that the August 12, 1966, indictment was untimely.

Such a construction of § 6513(a) produces the absurd result that the statute of limitations on an offense involving the *filing* of a false return begins to run before the offense has been committed, *i.e.*, before the return has been filed. The language, the purpose, and the legislative history of the section clearly demonstrate that it was meant to apply only to an "Early Return," *i.e.*, one which was "filed before the last day prescribed for the filing thereof * * * determined without regard to any extension of time granted the taxpayer" (1954 Code § 6513(a)) and that it was not meant to apply where the taxpayer obtained "an extension of time in which to file [his] returns." H. Rep. No. 2333, *supra;* S. Rep. No. 1631, *supra.*

2. The lower court decisions are in conflict on this question. The district court in the instant case and the Fifth Circuit in *Hull* v. *United States,* 356 F. 2d 919, have held that § 6513(a) applies to returns which are filed *after* the original due date prescribed by the Code; one other district court in *United States* v. *Hensley,* 257 F. Supp. 987 (D. N.M.), in a well reasoned opinion, reached the result urged here by the government. The question presented is a recurring one—the problem is present in 10 to 20 cases a year—and the issue should be resolved by this Court.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted.

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APRIL 1967.

APPENDIX A

United States District Court, Southern District of Indiana, Indianapolis Division

No. IP 66–Cr–138

UNITED STATES OF AMERICA

v.

ARNOLD F. HABIG
JEROME M. SCHROERING

Entry

The above entitled action came before the Court for ruling on defendants' Motion to Dismiss Counts IV and VI of Indictment and brief in support thereof filed October 28, 1966, the government's memorandum in opposition thereto filed November 8, 1966, plaintiff's reply brief filed November 28, 1966, Stipulation of Facts filed December 27, 1966, and the government's and defendants' waiver of an evidentiary hearing and argument filed January 13, 1967. The Court being duly advised in the matter now finds:

1. That Count IV of the indictment charges that on or about August 15, 1960 the defendants filed and caused to be filed a false and fraudulent tax return on behalf of Gordonsville Manufacturing Company Inc.

2. That Count VI of the indictment charges that on or about August 12, 1960 the defendants did willfully and knowingly aid and assist in, and counsel, procure and advise the preparation and presentation of a false and fraudulent tax return on behalf of W. W. Kimball Company.

3. That the companies on whose behalf the fraudulent tax returns were allegedly filed had fiscal taxable years ending on the last day of the month of February 1960.

4. That the prescribed date for filing the tax returns allegedly filed by the defendants on behalf of Gordonsville Manufacturing Company Inc. and W. W. Kimball Company was May 15, 1960.

5. That the Gordonsville Manufacturing Company Inc. received a three month extension for the filing of its tax return on May 16, 1960 by filing an application therefore with the Director of Internal Revenue, Indianapolis, Indiana, on May 16, 1960, and that the W. W. Kimball Company received a three month extension for the filing of its tax return on May 9, 1960 by filing an application therefore with the District of Internal Revenue, Chicago, on May 9, 1960.

6. That the tax return allegedly filed by the defendants on behalf of Gordonsville Manufacturing Company Inc. was filed with the Director of Internal Revenue, Indianapolis, Indiana, August 15, 1960, and that the tax return allegedly procured by the defendants on behalf of W. W. Kimball Company was filed with the District Director of Internal Revenue, Chicago, Illinois, on August 12, 1960.

7. That the indictment in this action was returned August 12, 1966.

IT IS THEREFORE ORDERED AND ADJUDGED that the defendants' Motion to Dismiss Counts IV and VI of Indictment is SUSTAINED and that Counts IV and VI of the indictment be and are hereby dismissed. The period of limitations for the offenses charged in Counts IV and VI of the indictment is six (6) years. Title 26 U.S.C.A. Section 6531. For the purpose of determining the period of limitation on criminal prosecutions, the rules of Section 6513 are applicable Title

26 U.S.C.A. Section 6531. Title 26 U.S.C.A. Section 6513 states that "For the purposes of this subsection, the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer * * *". Therefore, the question presented by the Motion to Dismiss is whether the indictment in Counts IV and VI was returned beyond the period of limitations. If the returns in question are deemed to be filed on the date they were actually received, then the indictment on Counts IV and VI is not defective, for it was returned within the six (6) year period of limitations from those dates. However, such a construction is unacceptable in light of the statutory authority quoted above. The statutory mandate is clear—for the purpose of criminal prosecutions, the last day prescribed for filing shall be determined without regard to any extension of time granted the taxpayer. The last day prescribed for filing the returns in question was May 15, 1960 and the indictment was returned August 12, 1966 which is clearly beyond the six (6) year statute of limitations. The government has proposed the theory that a taxpayer who is given the benefit of an extension of time acquires a new due date. Even if this were so, it would not remedy the defect in Count IV of the indictment, for Gordonsville Manufacturing Company Inc. did not receive an extension until May 16, 1960. The statute of limitations necessarily began to run on the original due date of May 15, 1960. The Court cannot, in any case, accept the government's construction of Section 6513 for it is based upon a consideration of sections concerning civil claims for credits or refunds of which it is admittedly a part. However, Congress by Section 6531 for the sole purpose of determining the period of limitations in criminal prosecutions adopted only Section 6513. This

Congress had a right to do. The statute is not ambiguous, and therefore leaves no room for construction. As was stated in *Hull v. United States,* 356 F.2d 919 (5th Cir. 1966), "The statute seems clear to the effect that returns are deemed to have been filed and wilfull acts of (sic) omissions committed on the last date prescribed for the filing of returns irrespective of extensions of time granted * * *". Judge Steckler, Chief Judge of this Court, in the case of United States v. Sheety, 224 F.Supp. 789 (S.D.Ind. 1963) made a similar finding. In that case the Court construed Section 6531 and Section 6513(a) and held that the date of the offense is considered to be the date prescribed for filing. The Court went on to say that it considered itself bound "by the clear language" of the statutes. This Court can find no reason to deviate from that construction.

Dated this 23 day of January, 1967.

CALE J. HOLDER,

Cale J. Holder, Judge, United States District Court, Southern District of Indiana.

APPENDIX B

Internal Revenue Code of 1954 (26 U.S.C.):

Section 6513. TIME RETURN DEEMED FILED AND TAX CONSIDERED PAID

(a) *Early Return or Advance Payment of Tax.*—For purposes of section 6511, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day. For purposes of section 6511 (b)(2) and (c) and section 6512, payment of any portion of the tax made before the last day prescribed for the payment of the tax shall be considered made on such last day. For purposes of this subsection, the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer and without regard to any election to pay the tax in installments.

* * * * *

Section 6531. PERIODS OF LIMITATION ON CRIMINAL PROSECUTIONS.

No person shall be prosecuted, tried, or punished for any of the various offenses arising under the internal revenue laws unless the indictment is found or the information instituted within 3 years next after the commission of the offense, except that the period of limitation shall be 6 years.

* * * * *

(2) for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof;

(3) for the offense of willfully aiding or assisting in, or procuring, counseling, or advising, the preparation or presentation under, or in connection with any

matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim or document * * *

* * * * *

* * * For the purpose of determining the periods of limitation on criminal prosecutions, the rules of section 6513 shall be applicable.

U.S. GOVERNMENT PRINTING OFFICE: 1967

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MAY 19 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. ~~1311~~ 107

UNITED STATES OF AMERICA,
Appellant,

vs.

ARNOLD HABIG AND JEROME SCHROERING,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA.

MOTION TO AFFIRM.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No. 1311.

UNITED STATES OF AMERICA,
Appellant,

vs.

ARNOLD HABIG AND JEROME SCHROERING,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA.

MOTION TO AFFIRM.

The appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move the Court to affirm the judgment of the district court on the ground that the question presented is so insubstantial as not to need further argument.

ARGUMENT.

The district court correctly held that "the statutory mandate is clear—for the purpose of criminal prosecutions, the last day prescribed for filing shall be determined without regard to any extension of time granted the taxpayer. * * * The statute is not ambiguous, and therefore leaves no

room for construction." (Juris. St. 10, 11.) This was also the holding in *Hull* v. *United States*, 356 F. 2d 919 (5th Cir. 1966); *United States* v. *Doelker*, 211 F. Supp. 663 (N. D. Ohio 1962), *aff'd on another issue*, 327 F. 2d 343 (6th Cir. 1964); *United States* v. *Alper*, 200 F. Supp. 155 (N. J. 1961). *Accord*, *United States* v. *Black*, 216 F. Supp. 645 (W. D. Mo. 1963) and *United States* v. *Scheetz*, 224 F. Supp. 789 (S. D. Ind. 1963).

Whatever the meaning of section 6513(a) in its original context—civil claims for refund or credit instituted by the taxpayer and not the government—it clearly has in its criminal prosecution context the meaning embodied in the holding of the district court. That meaning becomes evident only in the relationship between sections 6513(a) and 6531.

With respect to the offenses charged in both counts dismissed by the district court, the proscribed act is completed upon the filing of a false corporate return. (Juris. St. 3n. 1.) But this conclusion does not answer the ultimate question presented by this appeal: When were the returns filed? The answer to this question is found in the relationship between sections 6513(a) and 6531. Under section 6531 the applicable period of limitation began to run upon "the commission of the offense." That section also provides that "for the purpose of determining the periods of limitation on criminal prosecutions, the rules of section 6513 shall be applicable." Section 6513 sets forth rules by which to determine when returns shall be deemed filed. Thus, when the offense charged is completed upon the filing of a false return, section 6513(a) in conjunction with section 6531 determines when a return is deemed filed.

By its holding the district court applied the full meaning of the last sentence of section 6513(a) in conjunction with section 6531. That sentence provides that "for purposes of

this subsection, the last day prescribed for filing the return . . . shall be determined without regard to any extension of time granted the taxpayer. . . .'' The government contends that this sentence has no meaning except when read with the first sentence, which relates only to returns actually filed before the due date for filing. The last sentence of section 6513(a) is, however, by its own introductory clause (''For purposes of this subsection . . .'') to be given effect co-extensive with the purposes of section 6513(a). These purposes were expanded by the incorporation of that section within the criminal prosecution limitation rules of section 6531. As the court in *United States* v. *Doelker,* 211 F. Supp. 663, 665 (N. D. Ohio 1962), *aff'd on another issue,* 327 F. 2d 343 (6th Cir. 1964), in determining the import of the introductory clause of the last sentence of section 6513(a), stated: ''[I]t becomes painfully clear that one of the 'purposes' of Section 6513(a) is the determination of the commencement of the periods of limitations which are contained in Section 6531.''[1]

The decision of the district court is in harmony with this Court's enunciated principle that criminal statutes of limitations are to be liberally construed in favor of the defendant. *United States* v. *Scharton,* 285 U. S. 518 (1932). This liberal construction is fundamentally different than that accorded defendants in civil cases. Thus the Court of Appeals for the Tenth Circuit recently held, in *Waters* v. *United States,* 328 F. 2d 739 (10th Cir. 1964), that the period of limitation specified by section 6531 constitutes a jurisdictional bar to prosecution, and not an affirmative

1. The government claims that the court in the only decided case in support of its position, *United States* v. *Hensley,* 257 F. Supp. 987 (N. M. 1966), arrived at its holding ''in a well reasoned opinion.'' (Juris. St. 6.) However, the court there concluded that *Doelker* was correctly decided. It stated: ''The Court correctly determined that the starting date of the statute of limitations was April 15. This is clearly provided in the third sentence of section 6513(a).'' *Id.* at 989.

defense, which must be originally pleaded on peril of waiver: "Unlike the statute of limitations in civil cases, it is not a mere limitation upon the remedy, but a limitation upon the power of the sovereign to act against the accused." *Id.* at 743.

None of the government's arguments in opposition to the meaning of section 6513(a) in conjunction with section 6531 are of substance. It resorts to legislative history to find support for its position, but it is the wrong history. (Juris. St. 5.) The statement in the 1942 committee reports cannot throw any light on the meaning of section 6513(a) in criminal cases, not only because its context and purpose was radically different—imposing limitations on actions by taxpayers filing claims for refund or credit—but because at that time there existed no other context, for it was not until 1954 that section 6531 was amended by adding the cross-reference to section 6513. (Juris. St. 5n.3.)[2] Given the expanded purposes of section 6513(a) in its criminal prosecution context, the 1942 legislative history is not relevant.

Next the government argues that the decision of the district court "produces the absurd result that the statute of limitations on an offense involving the *filing* of a false return begins to run before the offense has been committed, *i.e.*, before the return has been filed." (Juris. St. 6.) This argument is negated by the very existence of section 6513(a), which determines when a return is *deemed filed.* Thus the district court correctly held that under that section a return is deemed filed, and therefore the offense completed, not at the actual filing date, but at the original due date. The government in this argument fails to recognize that for the purpose of criminal periods of limitation

2. The 1954 committee reports to section 6531 only reiterate the cross-reference sentence added to it. 3 *U. S. Code Cong. & Ad. News* (83rd Cong. 2d Sess. 1954), 4564, 5237.

the filing of a return is a statutorily defined act; it is not an innately natural or human one. And it is the role of section 6513(a) to define that act for this purpose.

For these reasons it is apparent that the question presented by the government's appeal is unsubstantial: it is merely an attempt to impose, without warrant or reason, an unduly restricted meaning upon section 6513(a) in conjunction with section 6531. It is therefore respectfully submitted that the Court affirm the judgment of the district court without further argument.

Respectfully submitted,

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Counsel for the Appellees.

NOV 9 1967

JOHN F. DAVIS, CLERK

No. 107

In the Supreme Court of the United States

OCTOBER TERM, 1967

UNITED STATES OF AMERICA, APPELLANT

v.

ARNOLD HABIG AND JEROME SCHROERING

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA

BRIEF FOR THE UNITED STATES

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	3
Summary of argument	4
Argument:	
The statute of limitations on prosecutions for offenses involving the filing, after the statutory due date, of false tax returns runs from the date on which the returns actually were filed	6
Conclusion	15

CITATIONS

Cases:	
Benham v. *United States*, 215 F. 2d 472	6
Butzman v. *United States*, 205 F. 2d 343, certiorari denied, 346 U.S. 828	6
Cave v. *United States*, 159 F. 2d 464, certiorari denied, 331 U.S. 847	6
Hull v. *United States*, 356 F. 2d 919	11, 12, 13, 14
Swallow v. *United States*, 307 F. 2d 81, certiorari denied, 371 U.S. 950	6
United States v. *Alper*, 200 F. Supp. 155	12, 13
United States v. *Barber*, 219 U.S. 72	1
United States v. *Black*, 216 F. Supp. 645	12, 13
United States v. *Croessant*, 178 F. 2d 96, certiorari denied, 339 U.S. 927	6
United States v. *Doelker*, 211 F. Supp. 663	12, 13, 14
United States v. *Doelker*, 327 F. 2d 343	13
United States v. *Goldman*, 277 U.S. 229	1
United States v. *Hensley*, 257 F. Supp. 987	14
United States v. *Scheetz*, 224 F. Supp. 789	12, 13
United States v. *Yeoman-Henderson, Inc.*, 193 F. 2d 867	6

281-649—67——1

Statutes:

	Page
Internal Revenue Code of 1939 (26 U.S.C.), Sec. 322(b)(4)	10, 11
Internal Revenue Code of 1954 (26 U.S.C.):	
Sec. 6072	3
Sec. 6081	9
Sec. 6161	9
Sec. 6511	7
Sec. 6512	7
Sec. 6513(a)	2, 5, 6, 7, 8, 9
Sec. 6531	3, 4, 6, 11
Sec. 7201	4
Sec. 7206	4

Miscellaneous:

H. Rep. No. 1337, 83d Cong., 2d Sess., p. A416	11
H. Rep. No. 2333, 77th Cong., 2d Sess., p. 119	10, 11
10 Mertens, Law of Federal Income Taxation 55A.15	12
S. Rep. No. 1630, 77th Cong., 2d Sess., p. 156	11
S. Rep. 1622, 83d Cong., 2d Sess., p. 587	11

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BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (R. 11–14) is reported at 270 F. Supp. 929.

JURISDICTION

The order of the district court dismissing Counts 4 and 6 of the indictment was entered on January 23, 1967 (R. 14). Notices of appeal to this Court were filed in the district court on February 20 and 21, 1967 (R. 15–18), and this Court noted probable jurisdiction on October 9, 1967 (R. 19). The jurisdiction of this Court rests on 18 U.S.C. 3731. *United States* v. *Barber*, 219 U.S. 72; *United States* v. *Goldman*, 277 U.S. 229, 236–237.

QUESTION PRESENTED

Under the Internal Revenue Code certain corporate income tax returns were due for filing on May 15, 1960, but the corporations obtained extensions of time to August 15, 1960. The returns were filed on August 12 and 15, 1960. The question presented is whether the six-year statute of limitations on crimes relating to the alleged falseness of the returns began to run when the returns were filed (August 12 and 15, 1960) or when the returns would have been due had there been no extensions of time (May 15, 1960).

STATUTE INVOLVED

Internal Revenue Code of 1954 (26 U.S.C.):

> SECTION 6513. TIME RETURN DEEMED FILED AND TAX CONSIDERED PAID.
>
> (a) *Early Return or Advance Payment of Tax.*—For purposes of section 6511, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day. For purposes of section 6511(b)(2) and (c) and section 6512, payment of any portion of the tax made before the last day prescribed for the payment of the tax shall be considered made on such last day. For purposes of this subsection, the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer and without regard to any election to pay the tax in installments.
>
> * * * * *

SECTION 6531. PERIODS OF LIMITATION ON CRIMINAL PROSECUTIONS.

No person shall be prosecuted, tried, or punished for any of the various offenses arising under the internal revenue laws unless the indictment is found or the information instituted within 3 years next after the commission of the offense, except that the period of limitation shall be 6 years—

* * * * *

(2) for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof;

(3) for the offense of willfully aiding or assisting in, or procuring, counseling, or advising, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim or document * * *.

* * * For the purpose of determining the periods of limitation on criminal prosecutions, the rules of section 6513 shall be applicable.

STATEMENT

Appellee Habig was the president of Gordonsville Manufacturing Company and W. W. Kimball Company (R. 7–8). Both corporations' income tax returns for the fiscal year ending February 29, 1960, were due on May 15, 1960. 26 U.S.C. 6072(b). Both obtained from the government three month extensions of time for filing the returns—to August 15, 1960. Kimball's

return was filed on August 12, 1960, and Gordonsville's on August 15, 1960. (R. 12.)

On August 12, 1966, a seven count indictment was filed, charging appellees with crimes with respect to these and other tax returns. Count IV (R. 7) alleged that they had attempted to defeat tax owed by Gordonsville by understating its income on the return, in violation of Section 7201 of the Internal Revenue Code of 1954. Count VI (R. 8) alleged that they knowingly aided the preparation and filing of a false and fraudulent return for Kimball by overstating the corporation's gross receipts, in violation of Section 7206(2) of the Code.[1]

Appellees moved to dismiss counts IV and VI (R. 10), asserting that the six-year limitations period, 26 U.S.C. 6531, began to run on the day the returns were first due, May 15, 1960. The government contended that the offenses were committed when the returns were filed, on August 12 and 15, 1960, and that the limitations period did not begin to run until then. The district court accepted appellees' contentions and dismissed both counts (R. 11–14).

SUMMARY OF ARGUMENT

Appellees were charged with crimes that were not committed until the Gordonsville and Kimball returns were filed. Section 6531 of the 1954 Code states that criminal proceedings in such a case must be instituted within six years "next after the commission of the offense." However, it further provides that "[f]or the

[1] The other five counts related to other corporations or a later period (R. 5–9).

purpose of determining the periods of limitations on criminal prosecutions, the rules of section 6513 shall be applicable." The issue here is the proper scope of the last sentence of Section 6513(a).

Section 6513(a), which is captioned "Early Return or Advance Payment of Tax", by its plain language applies only where a taxpayer files his return or pays his tax before the due date specified in the Code. The first two sentences of the subsection provide that any return filed or tax paid "before the last day prescribed for the filing thereof shall be considered as filed [or paid] on such last day"; the third and final sentence states, "For purposes of this subsection, the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer." The only function of the latter sentence is to define the phrase "the last day prescribed" used in each of the preceding two sentences. The relevant House and Senate reports in unmistakable terms show this to be the intent of Congress.

The error in the reasoning of the court below, and like decisions of other courts, arose from the isolation of a portion of the third sentence of Section 6513(a) from the rest of the subsection. Contrary to the conclusion of those courts, neither that sentence nor any other part of Section 6513(a) has application to returns, such as those in the case at bar, which are filed after the due date specified in the Code. Thus there is no basis for the anomalous result below that the statute of limitations begins to run before any offense has been committed.

ARGUMENT

THE STATUTE OF LIMITATIONS ON PROSECUTIONS FOR OFFENSES INVOLVING THE FILING, AFTER THE STATUTORY DUE DATE, OF FALSE TAX RETURNS RUNS FROM THE DATE ON WHICH THE RETURNS ACTUALLY WERE FILED

The crimes charged in counts IV and VI of the indictment are based on the contents of the Gordonsville and Kimball returns. Those returns were filed in August 1960. Before the returns were filed, appellees could not have been charged with those crimes, for it is settled that the offenses of attempting to evade by filing a false return, and of aiding in the preparation of a false return, are committed at the time the return is filed. *E.g., Swallow* v. *United States,* 307 F. 2d 81, 83 (C.A. 10), certiorari denied, 371 U.S. 950; *Benham* v. *United States,* 215 F. 2d 472, 473 (C.A. 5); *Butzman* v. *United States,* 205 F. 2d 343, 350–351 (C.A. 6), certiorari denied, 346 U.S. 828; *United States* v. *Yeoman-Henderson, Inc.,* 193 F. 2d 867, 869 (C.A. 7); *United States* v. *Croessant,* 178 F. 2d 96, 98 (C.A. 3); *Cave* v. *United States,* 159 F. 2d 464, 467 (C.A. 8), certiorari denied, 331 U.S. 847.

The limitations period for prosecution of these two offenses is contained in Sections 6531 (2) and (3) of the Code. That period is 6 years, "next after the commission of the offense". The only exception pertinent here is the final sentence of Section 6531, which states, "For the purpose of determining the periods of limitation on criminal prosecutions, the rules of Section 6513 shall be applied". The court below decided that the last sentence of Section 6513(a) sets

forth a rule which justified its conclusion that the limitations period began to run before the commission of the crimes at issue.

1. Section 6513(a) is captioned "Early Return or Advance Payment of Tax." The full text is:

> For purposes of section 6511, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day. For purposes of section 6511(b)(2) and (c) and section 6512, payment of any portion of the tax made before the last day prescribed for the payment of the tax shall be considered made on such last day. For purposes of this subsection, the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer and without regard to any election to pay the tax in installments.

As its title indicates, section 6513(a) was designed to apply when a return is filed or a tax paid before the statutory deadline. The first two sentences deal with the limitations periods on claims for refunds and tax court suits. See 26 U.S.C. 6511, 6512. The two sentences apply only when a return is filed or a tax is paid "before the last day prescribed". In each instance, the date of filing or payment is to be "considered * * * such last day." The third sentence defines the phrase "the last day prescribed" found in the first two sentences. The net effect of the plain language of the statute is to prolong the limitations period whenever a return is filed or tax paid "before the last day prescribed".

281-649—67——2

The Section encourages the early filing of returns and early payment of tax, for its effect is to permit a claim for refund to be filed within three years of the last day prescribed by the Code for filing the return, rather than three years from some earlier date on which the return may actually have been filed. For example, if a return is due on April 15 and is filed on January 31, the three-year period during which a claim for refund may be filed begins to run, not on January 31, but on the statutory due date, April 15, when the return is deemed to have been filed.

At the same time the government receives the benefit of a uniform expiration date of the limitations period for the great mass of taxpayers who file or pay on varying dates before the statutory deadline. Consequently, no taxpayer is able to advance the running of the limitations period, for civil or criminal purposes, by filing or paying in advance of that deadline. If, for example, the two corporate returns here in question had been filed April 15, 1960, Section 6513(a) would have caused the six-year statute of limitations to begin running not on April 15, 1960, but on May 15, 1960, the statutory due date.

The substance of the ruling below is that Section 6513(a) shortens the limitations period in the case of returns filed after the statutory due date. This reading of the statute is based on a misapprehension of the meaning of the third and final sentence of Section 6513(a). The pertinent language is "For purposes of this subsection, the last day prescribed for filing the return * * * shall be determined without regard to any extension of time * * *." The critical point is

the proper ambit of the prefatory phrase, "For purposes of this subsection". The "subsection" referred to is plainly Section 6513(a); the application of the third sentence is therefore to the other two sentences of that "subsection." Those two sentences state the "rules of section 6513[(a)]" that are adopted for criminal prosecutions in the final words of Section 6531. The only effect of the last sentence of Section 6513(a), in civil or criminal cases, is to modify the first two sentences of the same subsection, Section 6513(a). It does not, as the court below thought, by itself state an independent and general rule "for the purpose of criminal prosecutions" (R. 13).

The purpose of the third sentence, moreover, is clear. The first two sentences relate respectively to returns filed and payments made "before the last day prescribed" therefor. Income tax deadlines may be "prescribed" in either of two ways. The primary deadline is established by statute—for example, the April 15 deadline for filing tax returns of individuals reporting on a calendar year basis. The second kind of deadline is the type that was "prescribed" for appellees' corporations: an extended date, later than the statutory one, granted by the Commissioner. See 26 U.S.C. 6081, 6161.

The first two sentences of Section 6513(a), unless modified, would apply whether the statute or the Commissioner had "prescribed" the taxpayer's deadline. The effect of the third sentence is to restrict the application of those first two sentences to returns filed and payments made before a deadline created by

statute, and to avoid the application of those sentences to filings or payments made during an extension the Commissioner has granted. The third sentence, like the other two, does not apply to a return filed after the statutory deadline but during an administratively granted extension. Nothing in the language of the section supports the interpretation of the court below that Section 6513(a), which was intended to lengthen the limitations period when a return or payment is early, also shortens the period when filing or payment is later than the statutory deadline.

2. The legislative history of Section 6513(a) confirms that this is the sole effect of its last sentence. The first predecessor of Section 6513(a) was enacted in 1942. See Section 322(b)(4) of the 1939 Code, added by Act of October 21, 1942, Ch. 319, § 169(a)(4), 56 Stat. 877. The report of the House Ways and Means Committee (H. Rep. No. 2333, 77th Cong., 2d Sess. p. 119) states:

> If the taxpayer files his return before the last day on which it is due, the period in which he can file a claim for refund under the provisions of section 322(b)(1), measured from the date the return was filed, will expire sooner than would be the case if he waited until such last day. Section 150 of the bill adds paragraph (4) to section 322(b) to provide that the period of limitations with respect to credit or refund is measured from the last day prescribed for the filing of the return in cases where the return is filed before such last day. *This provision does not apply to taxpayers who are given the benefit of an extension of time in which to file their returns, and file the return before the last day of the extended period.* * * * [Emphasis supplied.]

Accord, S. Rep. No. 1630, 77th Cong., 2d Sess., p. 156.

Section 322(b)(4) of 1939 Code applied only to civil income tax refund proceedings. It was made applicable to criminal matters when the 1954 Code was adopted. At that time, Congress, by adding to Section 6531 the "rules of section 6513," said that it was applying to criminal prosecution "the existing income tax rule *as to early returns* * * *." H. Rep. No. 1337, 83d Cong., 2d Sess., p. A 416; S. Rep. No. 1622, 83d Cong., 2d Sess., p. 587. (Emphasis supplied.)

This legislative history of Section 6513(a), as clearly as the statutory language, demonstrates that the Section was meant to apply only to an "Early Return", *i.e.*, one which was "filed before the last day prescribed for the filing thereof * * * determined without regard to any extension of time granted the taxpayer" (Section 6513(a)), and that it was not meant to apply where—as here—the taxpayer obtained "an extension of time in which to file [his] return." H. Rep. No. 2333, *supra;* Sen. Rep. No. 1630, *supra.*

Therefore, none of the rules of Section 6513(a) applies in the case at bar. It necessarily follows that, as Section 6531 says, the limitations periods began to run on the same dates the returns were filed—the dates of "the commission of the offense[s] * * *." (Section 6531.)

3. The district court's contrary conclusion was based on the Fifth Circuit's decision in *Hull* v. *United States,* 356 F. 2d 919. That case presented a limitations question identical to the present one. Referring

to only the last sentence of Section 6513(a), the court of appeals said (p. 920):

> The statute seems to be clear to the effect that returns are deemed to have been filed and wilful acts of omissions committed on the last date prescribed for the filing of returns irrespective of extensions of time granted; thus, undisputably the statute of limitations bars prosecution on Count One. *United States* v. *Doelker,* 211 F. Supp. 663 (N.D. Ohio, 1962), aff'd per curiam 327 F. 2d 343 (6th Cir., 1964); *United States* v. *Black,* 216 F. Supp. 645 (W.D. Mo., 1963); Mertens, Law of Federal Income Taxation § 55A.15.

Thus, the Fifth Circuit offered no analysis of Section 6513(a), but merely relied on two district court decisions and Mertens. One of the cases on which Hull relies, *United States* v. *Black,* is inapposite. It involved at 1956 return filed in February 1957, before the April 15, 1957 deadline. The district court correctly rejected the defendant's argument that a March 1963, indictment was untimely. Since an early return was at issue, Section 6513(a) plainly had tolled the running of the statute until the statutory deadline, April 15. See also *United States* v. *Scheetz,* 224 F. Supp. 789, 793 (S.D. Ind.).

United States v. *Doelker,* the other case cited in *Hull,* and *United States* v. *Alper,* 200 F. Supp. 155 (D. N.J.), are the only other cases we have found that in any way support the decision below.[2]

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[2] The passage quoted from *Hull* is taken almost verbatim from the portion of Mertens' treatise that the Fifth Circuit cites. Mertens, in turn, relies entirely on *Black*, *Doelker*, and *Alper.*

Both *Doelker*[3] and *Alper* involved charges of failure to file returns in circumstances where an extension of time had been granted. Each holds that the statute of limitations began to run on the date when the return was originally due rather than on the new due date established by a duly granted extension. In each of the two cases the error in the court's reasoning arose from reading the third sentence of Section 6513(a) in isolation from the rest of the subsection. *Doelker* also says (211 F. Supp. at 665):

> To require the Government and the taxpayer to hold the evidence relating to the making of the return for six years from the date prescribed by law on which the return is to be made is long enough. * * *

The court thereby substituted for the statutory language its own views of what the limitations period should be. Section 6513(a) was adopted because Congress decided that in the case of early returns six years is not "long enough". See *United States* v. *Black, supra; United States* v. *Sheetz, supra.* The anomalous effect of *Hull, Doelker, Alper,* and the decision below is to transpose the statute into one that makes the limitations period less six years after commission of the crime—precisely the opposite of what Congress had in mind.

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[3] The government did not appeal this decision. Doelker was ultimately convicted on another count, and the conviction was sustained on appeal. *United States* v. *Doelker*, 327 F. 2d 343 (C.A. 6). Although *Hull* cites the Sixth Circuit as affirming *Doelker* on the limitations issue, the question was not involved in the *Doelker* appeal.

This result, as we have shown above, cannot be squared with language of the Code or the intent of Congress.[4] Our research discloses no other instance in which courts have ruled that a legislature intended a limitations period to begin to run before a crime has been committed or a liability created. Absent the clearest of language, or an unmistakable expression of legislative intent, no prudent person would expect or rely on such a theory in deciding whether to keep evidence relating to tax or other liabilities. Where, as

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[4] There is but one decision, in addition to that below, which considers the Fifth Circuit decision in *Hull. United States* v. *Hensley*, 257 F. Supp. 987 (D. N. Mex.), like the present case and *Hull*, involved a charge of "filing * * * an allegedly false return after the statutory due date and during a period of extension granted by the Director". *Id.* at 990. The district court concluded, as we contend, that "*Hull* * * * is incorrect," and held that the limitations period began to run when the allegedly false return was filed. *Ibid.* However, the decision was based on a different theory than we advance (*ibid.*):

> The third sentence of Section 6513 only relates to determination of the last date *prescribed* for filing a return or paying a tax and fixes that date for purposes of the statute of limitations. Insofar as the offenses charged * * * are concerned, the last date *prescribed* for filing a return or paying the tax has no bearing and is not an issue. The offense, if proved, would have been committed when the return was actually filed, regardless of the due date. [Emphasis in original.]

In another part of the opinion, however, the *Hensley* court approved the result of *Doelker* (*id.* at 989), but distinguished the case on the ground that it involved the different charge of failure to file. We believe that, in so doing, the court erred, since it thereby said that the limitations period, for prosecutions based on a failure to file, begins to run on the statutory due date and not at the end of a duly granted extension, when the duty to file arose.

here, the language of Section 6513(a) does not purport to apply for any purpose to returns filed during an extended period, and where the pertinent legislative materials show that Congress specifically intended to exclude such returns from the ambit of Section 6513(a), there is no basis for the ruling below that the limitations period began to run before a crime had been committed and when no prosecution could have been brought.

CONCLUSION

The judgment of the district court should be reversed, and the case remanded with directions to reinstate Counts IV and VI of the indictment.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 107

UNITED STATES OF AMERICA,
Appellant,

vs.

ARNOLD HABIG AND JEROME SCHROERING,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA.

BRIEF FOR THE APPELLEES.

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INDEX.

	PAGE
Question Presented	1
Summary of Argument	2
Argument	3
The Offenses Were Committed, and Thus the Periods of Limitation Began to Run, on the Due Dates for Filing Prescribed by Statute, Without Regard to Extensions of Time for Filing	3
Conclusion	10

CITATIONS.

Cases.

Canton v. United States, 226 F. 2d 313 (8th Cir. 1955), cert. denied, 350 U. S. 965 (1956)	3
Cave v. United States, 159 F. 2d 464 (8th Cir.), cert. denied, 331 U. S. 847 (1947)	3
Guzik v. United States, 54 F. 2d 618 (7th Cir. 1931), cert. denied, 285 U. S. 545 (1932)	3
Hull v. United States, 356 F. 2d 919 (5th Cir. 1966)	9
Myres v. United States, 174 F. 2d 329 (8th Cir.), cert. denied, 338 U. S. 849 (1949)	3
United States v. Alper, 200 F. Supp. 155 (N. J. 1961)	9
United States v. Black, 216 F. Supp. 645 (W. D. Mo. 1963)	7, 9
United States v. Croessant, 178 F. 2d 96 (3rd Cir. 1949), cert. denied, 339 U. S. 927 (1950)	3

United States v. Doelker, 211 F. Supp. 663 (N. D. Ohio 1962), aff'd on another issue, 327 F. 2d 343 (6th Cir. 1964) 9, 10

United States v. Hensley, 257 F. Supp. 987 (N. M. 1966) 9

United States v. Scharton, 285 U. S. 518 (1932) 5, 6, 10

United States v. Scheetz, 224 F. Supp. 789 (S. D. Ind. 1963) 9

United States v. Yoeman-Henderson, Inc., 193 F. 2d 867 (7th Cir. 1952) 3

Statutes.

Internal Revenue Code of 1954 (26 U. S. C.):

Sec. 6501 ..... 2, 4

Sec. 6513 ..... 2, 3, 4, 5, 6, 7, 8, 9, 10

Sec. 6531 ..... 2, 3, 4, 5, 6, 7, 8, 9, 10

Miscellaneous.

H. R. Rep. No. 1337, 83d Cong., 2d Sess. A416 (1954) .. 8

S. Rep. No. 1622, 83d Cong., 2d Sess. 588 (1954) 8

Treas. Reg. § 301.6501(b)-1(a) 5

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA.

BRIEF FOR THE APPELLEES.

QUESTION PRESENTED.

The offenses charged in the counts of the indictment dismissed by the district court were based on the contents of tax returns filed, pursuant to extensions of time for filing, after the due dates for filing prescribed by statute. The question presented is whether the offenses were committed on the due dates for filing prescribed by statute, without regard to extensions of time for filing, or on the dates the returns were filed.

SUMMARY OF ARGUMENT.

For the purpose of determining the periods of limitation on criminal prosecutions, section 6531 provides that resort must be had to the rules of section 6513. The rules of section 6513 applicable here are that returns are deemed filed on the due dates for filing prescribed by statute, without regard to extensions of time for filing. Thus, for the purpose of determining the periods of limitation where the offenses charged are based on the contents of returns, the offenses are committed, and the periods begin to run, on the due dates for filing the returns prescribed by statute, without regard to extensions of time for filing.

The rules of section 6513, for the purpose of determining the periods of limitation on criminal prosecutions, must be in conformity with the purposes of section 6531, the criminal statute of limitations, and the general policy of repose to be applied in construing criminal statutes of limitation. Thus whatever limitations and total structural integrity those rules may have in their civil context, claims for refund or credit instituted by the taxpayer, they must here be determined and applied as part of a criminal statute. In this respect it is notable that the rules of section 6513, even when viewed in their civil context, do not expressly require the result pressed by the government, whereas another set of comparable rules, found in section 6501, does expressly require that result. Only if such an express statement existed in the rules of section 6513 should the government's construction be accepted.

The relevant legislative history is not helpful. The legislative history cited by the government is not applicable.

The district court's construction of the rules of section 6513 in their criminal context is the construction arrived at by several other courts, presumably by considered judgments.

ARGUMENT.

The Offenses Were Committed, and Thus the Periods of Limitation Began to Run, on the Due Dates for Filing Prescribed by Statute, Without Regard to Extensions of Time for Filing.

1. Section 6531 provides that periods of limitation begin to run upon "the commission of the offense. . . ." It also provides that "for the purpose of determining the periods of limitation on criminal prosecutions, the rules of section 6513 shall be applicable." This latter provision was new in the statute in 1954. Before the applicability of those rules in criminal prosecutions courts had held that an offense based on the contents of a tax return is committed at the time the return is filed.[1] In so holding, courts were not under any statutory mandate regarding when returns are deemed to have been filed for purposes of determining periods of limitation.[2] It is now the purpose of the rules of section 6513 to provide that mandate.

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1. *Canton* v. *United States*, 226 F. 2d 313, 321 (8th Cir. 1955), *cert. denied*, 350 U. S. 965 (1956); *United States* v. *Yeoman-Henderson, Inc.*, 193 F. 2d 867, 869 (7th Cir. 1952); *United States* v. *Croessant*, 178 F. 2d 96, 98 (3rd Cir. 1949), *cert. denied*, 339 U. S. 927 (1950); *Myres* v. *United States*, 174 F. 2d 329, 334 (8th Cir.), *cert. denied*, 338 U. S. 849 (1949); *Cave* v. *United States*, 159 F. 2d 464, 467 (8th Cir.), *cert. denied*, 331 U. S. 847 (1947); *Guzik* v. *United States*, 54 F. 2d 618, 619 (7th Cir. 1931), *cert. denied*, 285 U. S. 545 (1932).

2. Thus in *Cave*, *supra* note 1, the accused, who had been charged with an offense based on the contents of a return which had been filed on January 15, 1945, argued "that since the tax was not due until March 15, 1945, there could be no criminal attempt to defeat or evade it prior to that time. . . .". The court held that the offense charged "is complete when the taxapayer willfully and knowingly files a false and fraudulent return with intent to defeat or evade any part of the tax due the United States." The government concedes that this result is not viable under the 1954 Code. Govt. Br. 8. The pre-1954 Code cases are, consequently, of no help in answering the question presented by this appeal.

The "rules of section 6513" are by reference incorporated in section 6531. The district court held that they are each to be given full effect in their section 6531 criminal context. It interpreted the incorporation by reference of the several rules of section 6513 to infuse into each separate rule a general applicability in its section 6531 context.

The scope of application of the rules of section 6513 is to be determined by an examination of their meaning in their section 6531 criminal context, and not by an examination of section 6513 independent of section 6531, which is the government's approach. See Govt. Br. 7-10. Whatever the meaning of section 6513 in its original context—civil claims for refund or credit instituted by the taxpayer—the incorporation of its rules into section 6531 requires that they be examined in a different context. There are reasons which lead to this conclusion.

First, it is not section 6513, with its incidental civil associations, echoes and total structural integrity which is incorporated into section 6531; it is instead its "rules" that are incorporated into section 6531. These rules are several. By their incorporation into section 6531 they of necessity, as expressly stated in section 6531, take on a new concern: "'determining the periods of limitation on criminal prosecutions. . . .'" Thus any of the limitations imposed on the rules of section 6513 in their civil context which are not in accord with the purposes of section 6531 should be disregarded.

Second, when Congress has intended the result pressed by the government it has directly said so. In subsection (a) of section 6501, which sets forth the general rule of limitations on assessments and collections, it is provided that taxes "shall be assessed within 3 years after the return was filed (whether or not such return was filed on *or after*

the date prescribed). . . .'"[3] (Emphasis added.) Only such a direct expression of meaning should support the construction urged by the government. *Cf., United States* v. *Scharton,* 285 U. S. 518 (1932), where the Court affirmed a decision dismissing an indictment on the ground that the applicable period of limitation, set forth in the predecessor of section 6531, had run. In opposition to the government's construction that the 6 year period implicitly covered defrauding and attempts to defraud, which the statute did not expressly cover, the Court noted that "there are, however, numerous statutes expressly making intent to defraud an element of a specified offense against the revenue laws." *Id.* at 521.

Third, since the "rules of section 6513" are here part of a criminal limitations statute, they are "to be liberally interpreted in favor of repose. . . ." *United States* v. *Scharton,* 285 U. S. 518, 522 (1932). This means that the purposes of the rules of section 6513 in their civil context should be disregarded to the extent they are not in conformity with the purposes of section 6531 and the general policy of repose.

The rules of section 6513 relevant to this appeal are two. First, there is the rule, several times set forth in section 6513, that in certain circumstances returns are deemed filed, and certain payments made, on the due date for filing,

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3. Subsection (b), with the regulation thereunder, then sets forth rules similar to the rules of section 6513:

> "For purposes of this section, a return of tax imposed by this title, except tax imposed by chapter 21 or 24, filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day." Section 6501(b)(1).
>
> "Any return, other than a return of tax referred to in paragraph (b) of this section, filed before the last day prescribed by law or regulations for the filing thereof (determined without regard to any extension of time for filing) shall be considered as filed on such last day." Treas. Reg. § 301.6501(b)-1(a).

or payment, prescribed by statute. Second, there is the rule found in the last sentence of subsection (a) which states that extensions of time are to be disregarded in determining the due date prescribed by statute. This rule puts persons charged with tax crimes with respect to returns for which extensions of time were granted on the same footing, for purposes of determining periods of limitation, as those charged with tax crimes with respect to returns for which no extensions of time were granted.

Under these rules the district court held that a return is deemed filed, and therefore the charged offense committed, for the purpose of determining the period of limitation on a criminal prosecution, not at the time of its filing, but at the due date for filing prescribed by statute, without regard to any extensions of time for filing.

The government's position is that the rules of section 6513 must be read as they are structured, related and limited in their civil context. Principally, the government argues, the rule as to when returns are deemed filed must be limited to returns filed before the due date for filing prescribed by statute. While such a reading of that rule may be correct in the civil context, it does not accord with the policy of repose favored in interpreting criminal statutes of limitation. *United States* v. *Scharton*, 285 U. S. 518, 522 (1932).

The government states that the district court's construction means "that the limitations period began to run before a crime had been committed and when no prosecution could have been brought." Govt. Br. 15. This statement begs the question on this appeal, which is the determination of when the charged offenses were committed, and not the determination of the length of the period of limitation, which is exactly 6 years. Section 6531. The holding of the district court thus does not, as the government contends

(Govt. Br. 8), shorten the period of limitation when returns are filed after the due date prescribed for filing. The government's statement is also negated by the very existence of the rule of section 6513 which determines when a return is deemed filed. The government in this argument fails to recognize that for the purpose of criminal periods of limitation the filing of a return is, by virtue of the rules of section 6513, an act defined by statute, and not an innately natural or human act. The government's "no prosecution" hiatus is, therefore, misconceived. As stated by the court in *United States* v. *Black,* 216 F. Supp. 645, 649 (W. D. Mo. 1963):

> "We know of no reason why the Congress of the United States could not select that firm date [the due date for filing prescribed by statute] for the commencement of the running of the statute of limitations on *all* criminal prosecutions rather than any other date it might wish to select; it is a matter within the exclusive power of the Congress. Defendant's arguments on this point are more properly directed to the Congress, not to the courts." (Emphasis added.)

Moreover, while the government expresses concern about a "no prosecution" hiatus in cases where returns are filed after the due date for filing prescribed by statute, it does not seem in the least concerned that such a hiatus also exists in cases where returns are filed before that date. The government concedes that "if, for example, the two corporate returns here in question had been filed April 15, 1960, Section 6513(a) would have caused the six-year statute of limitations to begin running not on April 15, 1960, but on May 15, 1960, the statutory due date." Govt. Br. 8. Thus, although a return has been filed before the statutory due date, the period of limitation does not begin to run until sometime thereafter, and that time is, according to section 6531, when the offense is committed. No prosecution could be brought during this period because

the offense has not yet been committed, in spite of the fact that the return has already been filed.

The government intimates that "a uniform expiration date of the limitations period" is part of the statutory purpose. Govt. Br. 8. In that case the rule applied by the district court is consistently in furtherance of that purpose: offenses are committed, for purposes of determining the periods of limitation, on the uniform due date for filing prescribed by statute.

2. The relevant legislative history is not illuminating. Both the Senate and House committee reports on section 6531 only reiterate the statutory language: "This section also provides that for purposes of the period of limitations on criminal prosecutions the rules of section 6513 shall be applicable." H. R. Rep. No. 1337, 83d Cong., 2d Sess. A416 (1954); S. Rep. No. 1622, 83d Cong. 2d Sess. 588 (1954).

The government resorts to legislative history to find support for its position. See Govt. Br. 10-11. It is the wrong history. The statement in the 1942 House committee report cannot throw any light on the meaning of the rules of section 6513 in criminal cases. This is because the statement was made with respect to the civil purposes of the rules of section 6513: the imposition of limitations on actions by taxpayers filing claims for refund or credit. Those purposes are different from the purposes of those rules in criminal cases. Moreover, in 1942 there existed only a civil context. It was not until 1954 that section 6531 was amended by adding the cross-reference to section 6513.

The government also misuses 1954 legislative history when it states that "at that time, Congress, by adding to Section 6531 the 'rules of section 6513,' said that it was applying to criminal prosecution 'the existing income tax

rule *as to early returns* * * *.' H. Rep. No. 1337, 83d Cong. 2d Sess., p. A416; S. Rep. No. 1622, 83d Cong., 2d Sess., p. 587." Govt. Br. 11. The language quoted by the government is from committee reports on section 6513, and not section 6531. It was not made with reference to criminal prosecutions but in connection with a 1954 amendment to section 6513. That amendment extended to all taxes, other than taxes on incomes, the existing income tax rule. The statement, in full and in context, is: "Subsection (a) of this section extends to all other taxes, in respect of which the taxpayer is required to file a return, the existing income tax rule as to early returns and advance payment." The language quoted by the government thus has no bearing on the question presented by this appeal.

3. The decision of the district court was based on a construction of sections 6513 and 6531 that has been adopted by several courts.[4] While the opinions of these courts do not always clearly reveal the rationale of the construction of the district court, they do arrive at that construction, and presumably by a considered judgment. The construction urged by the government has been accepted by only one court, in an opinion which acknowledges the correctness of a decision which supports the decision below.[5]

The government states that the district court in *United States* v. *Doelker*, 211 F. Supp. 663 (N. D. Ohio 1962), *aff'd on another issue*, 327 F. 2d 343 (6th Cir. 1964), "substituted for the statutory language its own views of what the limitations period should be." Govt. Br. 13. This is

4. *Hull* v. *United States*, 356 F. 2d 919 (5th Cir. 1966); *United States* v. *Doelker*, 211 F. Supp. 663 (N. D. Ohio 1962), *aff'd on another issue*, 327 F. 2d 343 (6th Cir. 1964); *United States* v. *Alper*, 200 F. Supp. 155 (N. J. 1961). *Accord*, *United States* v. *Black*, 216 F. Supp. 645 (W. D. Mo. 1963) and *United States* v. *Scheetz*, 224 F. Supp. 789 (S. D. Ind. 1963).

5. *United States* v. *Hensley*, 257 F. Supp. 987 (N. M. 1966). See Govt. Br. 14n.4.

not true. The court there based its decision on the construction here proposed. As stated by the court in *Doelker:*

> "Referring to the statute, it is notable that the last sentence of Section 6513(a) is limited by its own provisions to the 'purposes of this subsection.' But that phrase should not be construed to exclude from its purpose a determination of the date on which the periods of limitations contained in Section 6531 are to commence. Since Section 6531 expressly provides that for the purposes of determining when the period of limitations shall begin, the rules of Section 6513 shall be applicable, it becomes painfully clear that one of the 'purposes' of Section 6513(a) is the determination of the commencement of the periods of limitations which are contained in Section 6531." (*Id.* at 665) (Footnote omitted.)

The language of the court in *Doelker* quoted by the government, that the 6 year period beginning from the due date for filing prescribed by statute is "long enough," is merely an inevitable inference founded on the rationale of the decision, an inference which reflects the general policy of repose. *United States* v. *Scharton,* 285 U. S. 518, 522 (1932).

CONCLUSION.

The judgment of the district court should be affirmed.

Respectfully submitted,

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December, 1967.

SUPREME COURT OF THE UNITED STATES

No. 107.—October Term, 1967.

United States, Appellant, v. Arnold Habig et al. } On Appeal From the United States District Court for the Southern District of Indiana.

[March 5, 1968.]

Mr. Justice Fortas delivered the opinion of the Court.

Appellees were indicted for crimes relating to allegedly false income tax returns. The District Court dismissed Counts 4 and 6 of the indictment, charging an attempt to evade taxes by filing of a false return (26 U. S. C. § 7201) and aiding in the preparation and presentation of a false return (26 U. S. C. § 7206 (2)), on the ground that the six-year statute of limitations, 26 U. S. C. § 6531, barred prosecution under those counts. 270 F. Supp. 929. The United States filed notice of appeal to this Court under 18 U. S. C. § 3731. We noted probable jurisdiction. — U. S. —.

The question presented is the construction of §§ 6531 and 6513 (a) of the Internal Revenue Code of 1954 (26 U. S. C. § 6531 and § 6513 (a)). It is squarely raised by the facts of this case. The indictment was filed on August 12, 1966. The income tax returns involved in Counts 4 and 6 were filed on August 12 and 15, 1960. Section 6531 limits the time when indictments may be filed for the charged offenses to six years "next after the commission of the offense."

The offenses involved in Counts 4 and 6 are committed at the time the return is filed. See, *e. g.*, *Swallow* v. *United States*, 307 F. 2d 81, 83 (C. A. 10th Cir. 1962); *Benham* v. *United States*, 215 F. 2d 472, 473 (C. A. 5th Cir. 1954); *Butzman* v. *United States*, 205 F. 2d 343,

350–351 (C. A. 6th Cir. 1953); *United States* v. *Yoeman-Henderson, Inc.*, 193 F. 2d 867, 869 (C. A. 7th Cir. 1952); *United States* v. *Croessant*, 178 F. 2d 96, 98 (C. A. 3d Cir. 1949); *Cave* v. *United States*, 159 F. 2d 464, 467 (C. A. 8th Cir. 1947). Six years had not quite elapsed from the commission of the crimes in the present case to the filing of the indictment. Appellees do not contest the chronological calculation. But because of § 6513 (a) of the Code, they say that the critical date here is not the date when the returns were actually filed but the date when they were initially due to be filed, *viz.*, May 15, and not August 15, 1960.

The basis for this contention is as follows: Section 6531 which prescribes the six-year period of limitation, also says that "[f]or the purpose of determining [such] periods of limitation . . . the rules of section 6513 shall be applicable." Instead of filing on the due date of May 15, 1960, the corporations obtained extensions of time to August 15, 1960. Accordingly, if the six-year period of limitation runs not from the date of actual filing (August 12 and 15, 1960), but from the original due date of the returns (May 15, 1960), the indictment, being filed on August 12, 1966, was several months too late.

Section 6513 (a) reads as follows:

> "SECTION 6513. TIME RETURN DEEMED FILED AND TAX CONSIDERED PAID.
>
> "(a), *Early Return or Advance Payment of Tax.*— For purposes of section 6511 [relating to claims for credit or refund], any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day. For purposes of section 6511 (b)(2) and (c) and section 6512 [relating to suits in the Tax Court], payment of any portion of the tax shall be considered made on such last day. For purposes of this subsection, the last

> day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer and without regard to any election to pay the tax in installments."

Appellees' argument is that by reason of the third sentence of § 6513 (a), the starting date for computing the six-year limitation period is to be determined by the original due date of the return, May 15, 1960, "without regard to any extension of time granted the taxpayer." The District Court agreed. In other cases, the Court of Appeals for the Fifth Circuit, *Hull* v. *United States*, 356 F. 2d 919 (1966), and the District Courts for the Northern District of Ohio, *United States* v. *Doelker*, 211 F. Supp. 663 (1962), and the District of New Jersey, *United States* v. *Alper*, 200 F. Supp. 155 (1961), have so held. The District Court for the District of New Mexico has arrived at the contrary result. *United States* v. *Hensley*, 257 F. Supp. 987 (1966).

On the other hand, the Government argues that appellees' contention, despite its support in the decisions of several courts, is necessarily based upon the surprising assertion that Congress intended the limitations period to begin to run before appellees committed the acts upon which the crimes were based. It argues that this result cannot be squared with the language of the Code or the intent of Congress. We perforce agree with the Government's analysis.

Section 6513 (a), as its title clearly indicates, was designed to apply when a return is filed or a tax is paid before the statutory deadline. The first two sentences provide that the limitation periods on claims for refunds and tax suits (26 U. S. C. §§ 6511, 6512), when the return has been filed or payment made in advance of the date "prescribed" therefor, shall not begin to run on the early date, but on the "prescribed" date. The third sentence states that, for "purposes of [the] subsection," the date

"prescribed" for filing or payment shall be determined on the basis fixed by statute or regulations, without regard to any extension of time. The net effect of the language is to prolong the limitations period when, and only when, a return is filed or tax paid in advance of the statutory deadline.

There is no reason to believe that § 6531, by reference to the "rules of section 6513" expands the effect and operation of the latter beyond its own terms so as to make it applicable to situations other than those involving early filing or advance payment. The reference to § 6513 in § 6531 extends the period within which criminal prosecution may be begun only when the limitation period would also be extended for the refunds and tax suits expressly dealt with in § 6513—only when there has been early filing or advance payment. In other words, if a taxpayer anticipates the April 15 filing date by filing his return on January 15, the six-year limitations period for prosecutions under § 6531 commences to run on April 15. Practically, the effect of the reference to § 6513 in § 6531 is to give the Government the administrative assistance, for purposes of its criminal tax investigations, of a uniform expiration date for most taxpayers, despite variations in the dates of actual filing.

The legislative history supports this reading. The first predecessor of § 6513 (a) was enacted in 1942. See § 332 (b)(4) of the 1939 Code, added by Act of October 21, 1942, c. 319, § 169 (a)(4), 56 Stat. 877. This section applied only to civil income tax refund proceedings. The Report of the House Ways and Means Committee (H. R. Rep. No. 2333, 77th Cong., 2d Sess., p. 119) states:

> "If the taxpayer files his return before the last day on which it is due, the period in which he can file a claim for refund under the provisions of section

> 322 (b)(1), measured from the date the return was filed, will expire sooner than would be the case if he waited until such last day. Section 150 of the bill adds paragraph (4) to section 322 (b) to provide that the period of limitations with respect to credit or refund is measured from the last day prescribed for the filing of the return in cases where the return is filed before such last day. *This provision does not apply to taxpayers who are given the benefit of an extension of time in which to file their return before the last day of the extended period. . . .*" (Emphasis added.)

Accord, S. Rep. No. 163, 77th Cong., 2d Sess., p. 156. Then, in adopting the 1954 Code, the contested reference to § 6513 was added to § 6531. The House and Senate Reports expressly confirmed that § 6513 still encompassed "the existing . . . rule *as to early returns and advanced payment.* H. R. Rep. No. 1337, 83d Cong., 2d Sess., p. A 416; S. Rep. No. 1622, 83d Cong., 2d Sess., p. 587." (Emphasis added.)

The language of § 6513 (a) does not purport to apply when a return is filed during an extension of time. The legislative history is to the same effect. Accordingly, although we reiterate the principle that criminal limitations statutes are "to be liberally interpreted in favor of repose," *United States* v. *Scharton*, 285 U. S. 518, 522 (1932), we cannot read the statute as appellees urge.

The judgment of the District Court is reversed, and the case is remanded for further proceedings.

Reversed and remanded.

MR. JUSTICE MARSHALL took no part in the consideration or decision of this case.